

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

LAURA PONTONES, on behalf of herself)
and all others similarly situated,)

Plaintiff,)

v.)

SAN JOSE RESTAURANT,)
INCORPORATED; SAN JOSE)
MANAGEMENT, INC., d/b/a SAN JOSE)
MEXICAN RESTAURANT AND)
SPORTS CANTINA; SAN JOSE)
MEXICAN RESTAURANT #2 OF)
LUMBERTON, INC.; SAN JOSE)
MEXICAN RESTAURANT OF)
ELIZABETHTOWN, INC.; SAN JOSE)
MEXICAN RESTAURANT OF N.C.)
INC.; SAN JOSE MEXICAN)
RESTAURANT OF PEMBROKE, NC,)
INC.; SANJOSE MEXICAN)
RESTAURANT OF RALEIGH INC.;)
SAN JOSE MEXICAN RESTAURANT)
OF SHALLOTTE, INC.; SAN JOSE OF)
ROCKY MOUNT #2 INC., d/b/a SAN)
JOSE TACOS AND TEQUILA; SAN)
JOSE OF ZEBULON, INC.; SAN JOSE)
OF ROANOKE RAPIDS, INC.; SAN)
JOSE WAKEFIELD, INC., d/b/a SAN)
JOSE MEX AND TEQUILA BAR;)
PLAZA AZTECA RALEIGH, INC., d/b/a)
SAN JOSE TACOS AND TEQUILA;)
HECTOR FLORES; ALBERTO FLORES;)
JOSUE FLORES; JOSE PEREZ;)
VICENTE PEREZ; PABLO MEZA;)
EDGARDO FLORES; and EDGAR)
FLORES,)

CA No. 5:18-cv-219-D

Defendants.

PLAINTIFF'S EXPEDITED MOTION FOR HEARING

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, Class Counsel moves the Court for an expedited hearing. Class Counsel brings the instant Motion with respect to the disputes raised in The Parties' Joint Notice Regarding Proposed Notice of the Collective/Class Action, Dkts. 94-95. As explained in detail in the Parties' Joint Notice, the Parties do not agree on *three* significant issues with respect to providing notice of the certified collective/class action: (1) the method Notice is to be sent; (2) the relevant time period to include in the notice; and (3) the putative Plaintiffs and Rule 23 Class Members' contact information that Defendants were ordered to provide consistent with the Court's October 31, 2019 Order, (Dkt. 77), granting Plaintiff's Motion for Conditional and Class Certification (Dkt. 66). For example, Plaintiff's Motion for Conditional and Class Certification specifically requested the following¹:

conditional certification of this action as a representative collective action under the Fair Labor Standards Act ("FLSA") and certification of this action as a class action under Rule 23(a) and (b)(3) pursuant to the North Carolina Wage and Hour Act ("NCWHA"); (2) ***approval of the proposed FLSA/R.23 NCHWA notice of this action and the consent form in both English and Spanish; (3) a production of names, last known mailing addresses, alternate addresses, telephone numbers, email addresses, and dates of employment of all putative class members; (4) ability to email and/or text message the proposed Notice, along with utilizing regular U.S. Mail and posting the Notice at all locations in English and Spanish; (5) appointing named Plaintiff Laura Pontones as class representative, and the***

¹ Moreover, Defendant has *not* complied with the Court's Order, Dkt. 77, as the information requested in Plaintiff's Motion has not been produced; thus, notice has not been sent, notwithstanding the fact that Plaintiff's motion was granted almost four (4) months ago.

Law Offices of Gilda A. Hernandez, PLLC as class counsel.

More disturbing, however, after Class Counsel carefully reviewed Defendants' partially produced contact information, it contained, *at least* twenty-two (22) class members in the lists with the *same* mailing address as several of Defendants' restaurant locations. As such, Class Counsel respectfully requests that the Court host a hearing to address these concerns, so that a resolution may be reached in time for Class Counsel to send notice out by the February 28, 2020, or as soon as reasonably possible.²

Respectfully submitted February 13, 2020.

/s/ Gilda A. Hernandez

Gilda A. Hernandez (NCSB #36812)

Charlotte C. Smith (NCSB #53616)

**THE LAW OFFICES OF GILDA A.
HERNANDEZ, PLLC**

1020 Southhill Drive, Suite 130

Cary, NC 27513

Phone: 919-741-8693

Fax: 919-869-1853

ghernandez@gildahernandezlaw.com

csmith@gildahernandezlaw.com

Attorneys for Plaintiffs

² On February 12, 2020, the Parties conferred about the nature of this motion, including a request to schedule a hearing with the Court to fully address these issues. However, Defendants made clear that they opposed this motion.

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2020, I electronically filed the foregoing true and accurate copy of **PLAINTIFF'S EXPEDITED MOTION FOR HEARING** with the Court using the CM/ECF system, and I hereby certify that I have thereby electronically served the document on the following:

Henry W. Jones, Jr. (N.C. Bar No. 8343)
Lori Peoples Jones (N.C. Bar No. 32872)
Jordan Price Wall Gray Jones & Carlton, PLLC
P. O. Box 10669
1951 Clark Ave.
Raleigh, NC 27604
919-828-2501
919-834-8447 (fax)
hjones@jordanprice.com
ljones@jordanprice.com

James Larry Stine (GA Bar No.: 682555)
Wimberly, Lawson, Steckel, Schneider & Stine, P.C.
3400 Peachtree Rd., NE
Suite 400, Lenox Towers
Atlanta, GA 30326
404-365-0900
404-261-3707 (fax)
jls@wimlaw.com

Hipolito M. Goico
(GA. Bar No.: 299195)
Albert J. Bolet,
(GA Bar No. 065785)
GOICO & BOLET, PC
2021 North Druid Hills Road, N.E.
Suite 200
Brookhaven, Georgia 30329
Telephone: (404) 320-3456
Facsimile: (404) 320-3026
hbolet@goicobolet.com
abolet@goicobolet.com

Attorneys for Defendants

/s/ Gilda Adriana Hernandez
Gilda A. Hernandez (NCSB No. 36812)
Charlotte C. Smith (NCSB No. 53616)
**THE LAW OFFICES OF GILDA A.
HERNANDEZ, PLLC**
1020 Southhill Dr., Ste. 130
Cary, NC 27513
Tel: (919) 741-8693
Fax: (919) 869-1853
ghernandez@gildahernandezlaw.com
csmith@gildahernandezlaw.com

Attorneys for Plaintiff